IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3313 OF 2004

SHRI MATES MARYAN ANDRADE ... PETITIONER
VERSUS
SEBASTIAN MARYAN ANDRADE & Ors. .. RESPONDENTS

Miss Gavri Godse,Advocate, for the the petitioner.

CORAM: J.H.BHATIA,J.
DATE : 18th September, 2007

P.C.

1. Heard learned Counsel for the petitioner.

2. Respondent No.1 is the original plaintiff and the present petitioner is the original defendant No.1. The petitioner, respondent No.1 and responent No.3 are brothers and respondent No.2 is their sister. The plaintiff filed Suit No.549 of 1980 in the Court of Civil Judge, J.D. Thane, for partition of the family property which was in possession of the defendant No.1-petitioner and the suit was decreed in favour of the plaintiff NO.1 on 30.9.1988. Against that judgment and decree, the defendant No.1 had preferred Civil Appeal No.2/1997. On 17.6.1989, the Advocate for the present petitioner in that appeal filed a pursis that in view of the compromise talks, he does not want to prosecute the appeal. In the result, the appeal came to be dismissed for want of prosecution on that day. Thereafter, he filed an application for restoration of that appeal along with Misc. Application. No.199/1997 for condonation of delay in filing that application. After hearing, the application for condonation of delay came to be rejected by order dated 11.9.98.

3. From the record, it appears that the appeal came to be dismissed on 17.6.1989 in view of the pursis filed by the counsel for the petitioner. According to the petitioner, he came to know about dismissal of his appeal only in May 1997. However, the learned Joint District Judge Thane, while passing the impugned order, observed that in 1993 execution of the decree was commenced and notice was issued by the Tahsildar for the purpose of taking measurement and partition. On 25.1.94, the present petitoner had filed his objections before the Tahsildar. It indicates that the petitioner was fully aware that the appeal was dismissed and the decree was put to execution. Inspite of this, till 1997, he did not file any application for restoration of the appeal. The fact that he kept silent for about 3 - 4 years even after getting information of commencement of the execution indicates that he was fully aware about dismissal of the appeal. In these circumstances, the learned Joint District Judge found that there is no justification for condonation of delay of about 8 - 9 years in filing such application. Taking into consideration the circumstances, I find no fault with the impugned order. There is no substance in the petition.

The petition stands dismissed summarily.

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(J.H.BHATIA,J.)